IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 5TH OCTOBER 2007 / 13TH ASWINA 1929

WP(C).No. 29246 of 2006(F)

PETITIONER:

DHANABHAGYAM AMMAL S.,
W/O. C.SUBRAMANIAM, PROPRIETRIX,
M/S. RAJENDRA TALKIES, KALLEKULANGARA P.O.,
PUDUPARIYARAM, PALAKKAD DISTRICT.

***SUPPLEMENTAL 2ND PETITIONER IMPLEADED:**

P2. C.SUBRAMANIAN PILLAI,
S/O.LATE CHINNAPPA PILLAI,
RESIDING AT VII/486, RAILWAY COLONY,
HEMAMBIKA NAGAR,
KALLAKULANGARA (P.O.),
PALAKKAD – 678 009.

(*SUPPLEMENTAL SECOND PETITIONER IS IMPLEADED VIDE ORDER DTD. 28/03/2007 IN I.A.NO.4479/07)

BY ADV. SRI.P.N.KRISHNANKUTTY ACHAN(SR.)
SRI.K.MOHANAKANNAN

RESPONDENTS:

1. **STATE OF KERALA - REPRESENTED BY SECRETARY TO GOVERNMENT, LSG DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE CHIEF TOWN PLANNER, OFFICE OF THE TOWN PLANNER, KOTTARATHIL BUILDINGS, PALAYAM, THIRUVANANTHAPURAM.**

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/10/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.29246/2006 F

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE PROCEEDINGS NO.C-26846/2004/D.DIS.(1) DATED 30/09/2006 ISSUED BY THE 2ND RESPONDENT.**

EXT.P2: **COPY OF THE LETTER DTD. 20/01/2005 ISSUED BY THE 2ND RESPONDENT.**

EXT.P3: **COPY OF THE ORDER NO.20465/M1/05/LSGD DTD. 6/01/2006 ISSUED BY THE 1ST RESPONDENT.**

EXT.P4: **COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT ON 21/07/2006.**

EXT.P5: **COPY OF THE ORDER PASSED BY THE GOVERNMENT VIDE ORDER NO.37050/M1/06/LSGD DTD. 22/11/2006.**

2ND RESPONDENT'S EXHIBIT:

EXT.R2(A): **COPY OF GOVT.LETTER NO.37050/M1/06/LSGD DTD. 22/11/2006.**

/TRUE COPY/

P.A.TO JUDGE

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 29246 of 2006

Dated this the 5th day of October , 2007

JUDGMENT

The proprietor of a cinema house by name M/s. Rajendra Talkies filed this writ petition under Article 227 of the Constitution, arraying the State of Kerala and the Chief Town Planner as the respondents, complaining of undue delay on the part of the 2nd respondent in the matter of approving the lay out plan submitted by her for the reconstruction of her cinema house building and in granting permit for reconstruction. On the petitioner filing an application for approval of the lay out plan, the Chief Town Planner (2nd respondent) vide Ext.P1 proceedings dated 30.9.2004 approved the same. In Ext.P1 two conditions were imposed. The first condition was that the petitioner shall remit compounding fee under the Rules and Regulations in terms of Rule 143 of Kerala Municipality Building Rules 1999. The second condition was that the petitioner has to obtain a fire NOC under Rule 55 (8a) of the Kerala Municipality Building Rules. Contending that the fire NOC is not necessary for cinema house building, the petitioner approached the 2nd respondent again. But the

2nd respondent turned down the petitioner's request for exemption from production of fire NOC and Ext.P2 is the order of the 2nd respondent in that regard. Being aggrieved, the petitioner approached the first respondent Government and the Government passed Ext.P3 order dated 6.1.2006 directing the 2nd respondent not to insist on production of fire NOC in respect of the construction of the cinema house building. Since it was noticed that there was delay in spite of Ext.P3 on the part of the 2nd respondent that the petitioner filed Ext.P4 representation seeking passage of orders early urging that fire NOC is not necessary in the case of cinema theatres which are not air conditioned or multiple or multi-storeyed ones in view of the provisions of the Cinemas Regulations Rules 1988 and Rule 55 (1) of the KMBR. The petitioner therefore filed the writ petition seeking a writ of mandamus commanding the 2nd respondent to pass orders exempting the production of the fire NOC as directed in Ext.P3 Government Order.

2. When the writ petition came up for admission, the Government Pleader took notice on behalf of the first respondent and urgent notice on admission was issued to the 2nd respondent. An interim order was passed directing the 2nd respondent to consider and

pass orders on Ext.P4 representation in the light of Ext.P3 Government Order at the earliest and at any rate within two weeks of receiving a copy of that order. Thereafter, producing Ext.P5 Government Order dated 22.11.2006 by which Ext.P3 earlier Government Order was cancelled and raising additional grounds of challenge against Ext.P5, the petitioner filed application for amendment of the writ petition which was allowed. As per the amended writ petition, the following are the additional reliefs sought for ;

(i) (a). Writ of certiorari quashing Ext.P5.

(i)(b).A declaration that Rule 55 (8) (a) is not applicable to the case of the petitioner's theatre and fire NOC is not necessary in respect of the petitioner's theatre and direct the Respondents to issue appropriate orders in that behalf.

3. During the pendency of the writ petition the petitioner died and thereupon her husband was allowed to get himself impleaded as an additional petitioner on the strength of a Will under which the theatre in question has been bequeathed in his favour.

4. Ext.P5 order was passed by the Government in cancellation of Ext.P3 earlier order on the basis of a letter issued by the 2nd

respondent to the Government. The reasons stated in Ext.P5 for insistence of fire NOC is that it is provided by Section 382 of the Kerala Municipality Act 1994 that the provisions of that Act and Rules framed thereunder ought to be complied with while buildings are constructed or unreconstructed. In the writ petition, the petitioner points out Rules 55 (8a) and Rule 55 (10) of KMBR which are as follows:

> "Rule 55 (8a): In the case of assembly occupancy buildings, irrespective of their number of floors, a certificate or approval from the Director of Fire Force or an Office authorised by him in this behalf shall be obtained and produced for issuing building permit. "

> Rule 55 (10):- In the case of cinema theatres, the location, size and building construction shall conform to the provisions in the (Kerala Cinema Regulations) 1988 as amended from time to time and the IS;4878-1968 Byelaws for construction of Cinema Buildings"

It is therefore contended that constructions and reconstructions of cinema talkies is governed by the provisions of the Cinemas Regulation Rules 1988 and that it was on appreciating the above aspect, the Government had earlier passed Ext.P3 order exempting the production of fire NOC. Referring to Rule 12 (d) of the Cinemas Regulation Rules 1988, it is once again contended that fire NOC is necessary only in

respect of multi storied, multiple or air conditioned theatres and not for the petitioner's proposed construction which is only for a temporary cinema theatre. Ext.P5 is impugned on the ground of violation of principles of natural justice also since the same has been issued without hearing the petitioner. The Government's power to review Ext.P3 is also questioned by the petitioner. It is also alleged that Ext.P5 was issued on extraneous political considerations.

5. The first respondent has not filed any counter affidavit. On behalf of the 2nd respondent the Senior Town Planner has filed a counter affidavit. It is pointed out that by virtue of the powers under Section 274 of the Kerala Panchayat Raj Act 1994, provisions of the Kerala Municipality Building Rules 1999 have been extended to Pudupariyaram Grama Panchayat where the theatre in question is proposed to be reconstructed. Section 382 of the Kerala Municipality Act 1994 is referred to and it is contended that it is imperative that the construction or reconstruction of buildings in Pudupariyaram Grama Panchayat shall be as per the provisions of the Kerala Municipal Building Rules 1999. Rule 55 .10 of the Kerala Municipality Building Rules is also quoted in the counter affidavit. It is claimed that " the provisions in respect of location, parts of buildings, minimum height of auditorium, volume per person, arrangement of seating

screen shelter, guide ways, etc. are detailed in Part V of the Kerala Cinemas Regulation Rules 1988. Theatres are verified before issuing lay out and location approval from this department". The counter affidavit then refers to Rule 161 of the Kerala Municipality Building Rules 1988 and Rule 118 of the Kerala Cinemas Regulation Rules 1988 and contends that the Government have the power to interpret any provision if doubt arises regarding the applicability of Rules. It is claimed that it is invoking such powers that the Government clarified under Ext.P5 that the construction and reconstruction of Cinema theatres cannot be exempted from the provisions of Rule 55.8(a) of the Kerala Municipality Buildings Rules 1999. Along with the counter affidavit copy of Ext.P5 has been produced as Ext.R2 (a) and the counter affidavit goes on to justify Ext.R2(a). It is contended that Rule 55 (1) of the Kerala Municipality Building Rules only states about the additional provision for cinema theatre and does not clearly indicate that the cinema theatres need not comply with other provisions in respect of buildings.

6. Sri.K.Mohanakannan, the learned counsel for the petitioner addressed me on behalf of the petitioner and Sri.K.J.Muhammed Anzar the learned Government Pleader addressed me on behalf of the

respondents. While Sri.K.Mohanakannan addressed arguments on the basis of the various grounds raised and the documents placed on record particularly Exts.P3 and P5. Sri.Muhammed Anzar would defend Ext.P5 as best as he could.

7. Rule 5 (1) of Cinemas Regulation Rules 1988 provides as follows:

> "5 (1) Within fifteen days of receipt of the application, the Licensing Authority after inspecting the site shall scrutinize the same and if it is in order he shall forward a copy each of the application, plan and other connected records to the Executive Engineer, the Chief Electrical Inspector, the Town Planner where Master Plans are in existence and the concerned Health Officer and in the case of multiple, multi-storeyed and air conditioned theatres, to the Divisonal Officer, Fire Force, for their reports within thirty days from the date of receipt of reference from him."

Rule 6 of Cinemas Regulation Rules reads as follows:

> "6. Within 30 days on receipt of the reports from the Executive Engineer, the Chief Electrical Inspector or his nominee, the Town Planner, the Health Officer and Divisonal Officer, Fire Force (where called for) the Licensing Authority shall place the matter

> before the local authority, who may agree to the issue of permission in Form 'B' or refuse to agree to the issue of permission. The order of the Licensing Authority shall be in writing and shall contain reasons in brief for the decision. The permission shall be subject to such conditions as may be stipulated. "

8. Rule 12 lays down the procedure for approval of Building Construction and Issue of Licences in respect of of cinema house building. Rules 12 (1) and 12 (3) of the Cinemas Regulation Rules 1988 reads as follows:

> "12 (1) : The applicant shall give notice in writing to the Executive Engineer and the Chief Electrical Inspector or his nominee by registered post one month before the commencement of construction of the theatre and ancillary buildings to enable them to issue the certificates mentioned in sub-rule (3) of this rule".

> "12 (3) On completion of the building and electrical installation according to the approved plan, the applicant shall obtain after an application being made. "

(a)
(b)
(c)
(Omitted as unnecessary.)

(d) a certificate from the Divisional Forest Officer fire force in respect of fire protection measures in case of multiple, multi- storied and air conditioned theatres."

9. Rule 13 of the Cinemas Regulation Rules 1988 is also relevant and it is stated therein as follows.

"After obtaining the certificates referred to Rule 12, the applicant shall submit his application for licence under Section 3 of the Act in writing to the Licening Authority. The application shall be accompanied by:

(i)

(ii)

(iii)

(iv)

(Omitted as unnecessary)

(v) The certificate from the Divisional Officer (Fire Force in the case of multiple, multi-storeyed and air-conditioned theatres"

10. It is Rule 55 of the Kerala Municipality Building Rules 1999 which deals with an Assembly Occupancy. Rule 55 (1) provides as follows "

"55(1). Approval of the District Town Planner shall be obtained for the usage of plot exceeding 0.5. hectares and lay out of buildings up to 500 sq. metres area. under assembly occupancy and approval of the Chief Town Planner shall be obtained for the usage of plot exceeding 0.5

heaters and layout of building with more than 500 sq. metres area."

1(a) In the case of buildings used exclusively for worship the maximum permissible coverage shall be 50 per cent of the plot area."

11. Rules 55(8a) and 55 (10) of the Kerala Municipality Building Rules 1999 being relevant are quoted as follows:

"55(8a). In the case of assembly occupancy buildings, irrespective of their numbers of floors, a certificate or approval from the Director of fire Force or an Officer authorised by him in this behalf shall be obtained and produced for issuing building permit."

" Rule 55 (10). In the case of cinema theatres, the location, size and building construction shall conform to the provisions in the Kerala Cinema Regulations 1988 as amended from time to time and the IS 4878-1968 Bye laws for construction of Cinema Buildings."

12. Having considered the rival submissions addressed at the bar in the light of the Kerala Municipality Building Rules 1999 and Cinemas Regulations Rules 1988, I do not find any difficulty to hold that there is no justification for insistence of production of fire NOC from the fire force regarding the theatre building which is proposed to be constructed by the petitioner. It is not disputed that the petitioner

is only proposing to reconstruct an old cinema house and that the proposed building is neither multi theatre, nor multi stored theatre and not even an air conditioned theatre. The Kerala Cinenas Regulation Rules, in my opinion, being the special law governing construction of cinema houses should prevail over the Kerala Municipality Building Rules which is a general law.

13. The Kerala Municipality Building Rules itself clearly provides at Rule 55 (10) that in the case of cinema theatres, the location , size and building construction shall confirm to the provisions of the Kerala Cinemas Regulation Rules 1988 as amended from time to time and the IS :4878-1868 Bye laws for construction of cinema building. Ext.P5 order has been passed by the Government after this court had issued interim order dated 8.11.2006 directing the 2nd respondent to pass orders on the application filed by the petitioner (Ext.P4) in the light of Ext.P3 earlier order of the Government. Of course there is nothing to indicate that the Government had been put to notice regarding the interim order of this court while passing Ext.P5. It is actually seen that even before the interim order had been passed by this court the 2nd respondent had requested the Government for a review of Ext.P3. But then, it is doubtful whether the Government could have exercised

power of review in the absence of any statutory basis for such power. In my view issuance of Ext.P5 order by the Government without hearing the petitioner, who is beneficiary of Ext.P3, is in clear violation of principles of natural justice. Ordinarily I would have only quashed Ext.P5 and directed the Government to pass fresh orders. But in this case where the Government has not filed any counter affidavit and the legal position does not admit of any doubt or warrant any clarification , I am of the view that relief can be given to the writ petitioner in this petition itself.

14. The result is that:

i). The writ petition will stand allowed.

ii). Ext.P5 is quashed.

iii). It is declared that Rule 55 (8a) of the Kerala Municipality Building Rules is not applicable in the case of the petitioner's proposed theatre and that fire NOC is not necessary in respect of the said theatre. The 2nd respondent is directed to pass fresh orders regarding granting of approval of lay out plan in the case of the petitioner's cinema theatre as directed in Ext.P3 Government Order and communicate the decision to the petitioner. Decision as directed above shall be communicated within a maximum period of three weeks from receiving a copy of this judgment.

The parties are directed to bear their respective cost.

PIUS C. KURIAKOSE,
JUDGE.

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